

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

Owners Insurance Company,)	
)	
Plaintiff,)	
vs.)	CIVIL NO. 3:16-cv-621
)	
Christone Enterprises, Inc.,)	
Ray H. Lewis, and Alihah M. Lewis,)	
)	
Defendants.)	

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES the plaintiff, Owners Insurance Company, by Wham & Wham, its attorneys, and for its Complaint for Declaratory Judgment against the defendants herein, Christone Enterprises, Inc. (“Christone”), Ray H. Lewis and Alihah M. Lewis (the Lewises), states as follows:

NATURE OF THE ACTION

1. This is an action for declaratory relief pursuant to 28 U.S.C. § 2201 which arises out of an existing and actual controversy between the parties concerning the parties’ rights and obligations, more specifically, the existence of coverage, under a tailored protection insurance policy which includes, in part, commercial general liability coverage, being policy number 094604-07106032-15, coverage commencing on August 1, 2015 and expiring August 1, 2016.

2. The policy referred to above, attached hereto as Exhibit A, was issued to Christone Enterprises Inc.

3. That, during the policy period, claims for damages were asserted by the Lewises and against Christone arising out of a Management Agreement Contract concerning 2713 Pipers Court, Belleville, Illinois, as more particularly set forth hereafter.

4. As a result of the claimed damages, legal action has been initiated in the Circuit Court for the Twentieth Judicial Circuit, St. Clair County, Illinois, bearing cause number 2016-L-121, styled *Ray M. Lewis and Alihah M. Lewis vs. Christone Enterprises*. See Complaint attached hereto as Exhibit B.

THE PARTIES

5. At all times herein, plaintiff, Owners Insurance Company, was and is an Ohio mutual company with its principal place of business in Lansing, Michigan, and, therefore, a citizen of Ohio and Michigan.

6. Defendant Christone Enterprises, Inc., is an Illinois corporation with its principal place of business in St. Clair County, Illinois and, therefore, a citizen of Illinois.

7. Defendants Ray H. Lewis and Alihah M. Lewis are natural persons residing and domiciled in West Virginia and are the owners of the real property and improvements located at 2713 Pipers Court, Belleville, Illinois and, therefore, are citizens of West Virginia.

JURISDICTION

8. This Court possesses original jurisdiction of this civil action based upon diversity of citizenship pursuant to 28 U.S.C. § 1332. The matter in controversy exceeds \$75,000.00, exclusive of interest and cost, and is between citizens of different states.

VENUE

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 in that the activities giving rise to the controversy occurred in St. Clair County, Illinois, within this judicial district.

FACTUAL BACKGROUND

10. A true copy of the policy of insurance that is in controversy is attached hereto, marked Exhibit A, and made a part hereof.

11. On or about April 10, 2004, the Lewises entered into a Management Agreement Contract with Christone to exclusively rent, lease, operate and manage property located at 2713 Pipers Court, Belleville, Illinois. See Management Agreement Contract attached hereto as Exhibit C.

12. The Lewises now claim Christone has breached the terms and obligations of the Management Agreement Contract in failing to maintain the property, failing to make proper repairs, failing to diligently manage the property, failing to select appropriate renters and making repairs to the property without giving them proper notice.

13. Ray H. Lewis and Alihah M. Lewis have asserted the damages they have sustained are the result of Christone's breach of the Management Agreement Contract and negligence and negligent performance of its obligations under the terms of said agreement.

THE POLICY

14. Policy number 094604-07106032-15 affords coverage as follows:

SECTION I - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay because of "bodily injury" or "property damage" to which this insurance applies...
- b. This insurance applies to "bodily injury" and "property damage" only if:
 - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period;

...

2. Exclusions

This insurance does not apply to:

...

- b. **Contractual Liability**

"Bodily Injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. However, if the insurance under this policy does not apply to the liability of the insured, it also does not apply to such liability assumed by the insured under an "insured contract".
- (2) That the insured would have in the absence of the contract or agreement.

...
j.

Damage To Property

"Property damage" to:

...

- (7) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

...

Paragraph (7) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

...

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

(Exhibit A, pages 1 of 18 through 5 of 18.)

SECTION V - DEFINITIONS

- 4.** “Bodily injury” means bodily injury, bodily sickness or bodily disease sustained by a person, including death resulting from any of these at any time.
- 10.** “Insured contract” means:
- a.** A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an “insured contract”;
 - b.** A sidetrack agreement;
 - c.** Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d.** An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e.** An elevator maintenance agreement; or
 - f.** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph **f.** does not include that part of any contract or agreement:

- (1)** That indemnifies a railroad for “bodily injury” or “property damage” arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2)** That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a)** Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b)** Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
14. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Products-completed operations hazard":
 - a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
 - (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
 - b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, shown in the Declarations, states that products-completed operations are included.

18. "Property damage" means:

- a.** Physical injury to tangible property, including all resulting loss of use of that property. . .

27. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2) The providing of or failure to provide warnings or instructions.
(Exhibit A, pages 15 of 18 through 18 of 18.)

15. Plaintiff contends the policy does not afford coverage for the claims made against its insured, Christone Enterprises, Inc., and that one or more of the above exclusions are applicable to the claims made against Christone Enterprises, Inc.

16. By reason of the foregoing, an actual controversy exists between the plaintiff and defendants.

WHEREFORE, the plaintiff, Owners Insurance Company, requests the Court to enter a declaration of rights and declaratory judgment pursuant to 28 U.S.C. § 2201 that:

- A. The policy number 094604-07106032-15 does not provide coverage for the damages claimed to the property at issue; and
- B. For such other and further relief as the premises in equity may require.

Respectfully submitted,

s/ Daniel R. Price

Daniel R. Price IL #6188928

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